

ASSEMBLY BILL

No. 2624

Introduced by Assembly Member Medina

February 21, 2014

An act to amend Section 1770 of the Civil Code, and to add Section 17533.75 to the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2624, as introduced, Medina. False advertising: Made in North America.

Existing law makes unlawful certain acts identified as unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result, or that results, in the sale or lease of goods to any consumer. Existing law makes it unlawful for any person, firm, corporation, or association to sell, or offer for sale, merchandise that advertises itself as being made or manufactured in the United States when any article, unit, or part of the merchandise has been entirely or substantially made, manufactured, or produced outside of the United States. Existing law makes a violation of the latter provision a misdemeanor.

This bill would make it unlawful for any person, firm, corporation, or association to sell, or offer for sale, merchandise that advertises itself as being made or manufactured in North America unless the merchandise, or any article, unit, or part of the merchandise has been entirely or substantially made, manufactured, assembled, processed, or produced in the United States, Canada, or Mexico. Because a violation of these provisions would be a misdemeanor, the bill would create a new crime, thus, the bill would impose a state-mandated local program.

The bill would additionally include a representation in violation of these provisions among those acts identified as unfair methods of competition and unfair or deceptive acts or practices.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17533.75 is added to the Business and
2 Professions Code, to read:

3 17533.75. (a) It is unlawful for any person, firm, corporation,
4 or association to sell or offer for sale in this state any merchandise
5 on which merchandise or on its container there appears the words
6 “Made in North America,” “North American Made,” or similar
7 words unless the merchandise or any article, unit, or part thereof
8 has been entirely or substantially made, manufactured, assembled,
9 processed, or produced in the United States, Canada, or Mexico.

10 (b) For the purposes of this section, “substantially made” means
11 completed an act that added at least 70 percent of the merchandise’s
12 wholesale value by manufacture, assembly, fabrication, or
13 production to create the final, recognizable product. “Substantially
14 made” does not include the act of packaging the product.

15 SEC. 2. Section 1770 of the Civil Code is amended to read:

16 1770. (a) The following unfair methods of competition and
17 unfair or deceptive acts or practices undertaken by any person in
18 a transaction intended to result or which results in the sale or lease
19 of goods or services to any consumer are unlawful:

20 (1) Passing off goods or services as those of another.

21 (2) Misrepresenting the source, sponsorship, approval, or
22 certification of goods or services.

23 (3) Misrepresenting the affiliation, connection, or association
24 with, or certification by, another.

25 (4) Using deceptive representations or designations of
26 geographic origin in connection with goods or services.

1 (5) Representing that goods or services have sponsorship,
2 approval, characteristics, ingredients, uses, benefits, or quantities
3 which they do not have or that a person has a sponsorship,
4 approval, status, affiliation, or connection which he or she does
5 not have.

6 (6) Representing that goods are original or new if they have
7 deteriorated unreasonably or are altered, reconditioned, reclaimed,
8 used, or secondhand.

9 (7) Representing that goods or services are of a particular
10 standard, quality, or grade, or that goods are of a particular style
11 or model, if they are of another.

12 (8) Disparaging the goods, services, or business of another by
13 false or misleading representation of fact.

14 (9) Advertising goods or services with intent not to sell them
15 as advertised.

16 (10) Advertising goods or services with intent not to supply
17 reasonably expectable demand, unless the advertisement discloses
18 a limitation of quantity.

19 (11) Advertising furniture without clearly indicating that it is
20 unassembled if that is the case.

21 (12) Advertising the price of unassembled furniture without
22 clearly indicating the assembled price of that furniture if the same
23 furniture is available assembled from the seller.

24 (13) Making false or misleading statements of fact concerning
25 reasons for, existence of, or amounts of price reductions.

26 (14) Representing that a transaction confers or involves rights,
27 remedies, or obligations which it does not have or involve, or
28 which are prohibited by law.

29 (15) Representing that a part, replacement, or repair service is
30 needed when it is not.

31 (16) Representing that the subject of a transaction has been
32 supplied in accordance with a previous representation when it has
33 not.

34 (17) Representing that the consumer will receive a rebate,
35 discount, or other economic benefit, if the earning of the benefit
36 is contingent on an event to occur subsequent to the consummation
37 of the transaction.

38 (18) Misrepresenting the authority of a salesperson,
39 representative, or agent to negotiate the final terms of a transaction
40 with a consumer.

1 (19) Inserting an unconscionable provision in the contract.

2 (20) Advertising that a product is being offered at a specific
3 price plus a specific percentage of that price unless (A) the total
4 price is set forth in the advertisement, which may include, but is
5 not limited to, shelf tags, displays, and media advertising, in a size
6 larger than any other price in that advertisement, and (B) the
7 specific price plus a specific percentage of that price represents a
8 markup from the seller's costs or from the wholesale price of the
9 product. This subdivision shall not apply to in-store advertising
10 by businesses which are open only to members or cooperative
11 organizations organized pursuant to Division 3 (commencing with
12 Section 12000) of Title 1 of the Corporations Code where more
13 than 50 percent of purchases are made at the specific price set forth
14 in the advertisement.

15 (21) Selling or leasing goods in violation of Chapter 4
16 (commencing with Section 1797.8) of Title 1.7.

17 (22) (A) Disseminating an unsolicited prerecorded message by
18 telephone without an unrecorded, natural voice first informing the
19 person answering the telephone of the name of the caller or the
20 organization being represented, and either the address or the
21 telephone number of the caller, and without obtaining the consent
22 of that person to listen to the prerecorded message.

23 (B) This subdivision does not apply to a message disseminated
24 to a business associate, customer, or other person having an
25 established relationship with the person or organization making
26 the call, to a call for the purpose of collecting an existing
27 obligation, or to any call generated at the request of the recipient.

28 (23) The home solicitation, as defined in subdivision (h) of
29 Section 1761, of a consumer who is a senior citizen where a loan
30 is made encumbering the primary residence of that consumer for
31 the purposes of paying for home improvements and where the
32 transaction is part of a pattern or practice in violation of either
33 subsection (h) or (i) of Section 1639 of Title 15 of the United States
34 Code or paragraph (e) of Section 226.32 of Title 12 of the Code
35 of Federal Regulations.

36 A third party shall not be liable under this subdivision unless
37 (A) there was an agency relationship between the party who
38 engaged in home solicitation and the third party or (B) the third
39 party had actual knowledge of, or participated in, the unfair or
40 deceptive transaction. A third party who is a holder in due course

1 under a home solicitation transaction shall not be liable under this
2 subdivision.

3 (24) (A) Charging or receiving an unreasonable fee to prepare,
4 aid, or advise any prospective applicant, applicant, or recipient in
5 the procurement, maintenance, or securing of public social services.

6 (B) For purposes of this paragraph, the following definitions
7 shall apply:

8 (i) "Public social services" means those activities and functions
9 of state and local government administered or supervised by the
10 State Department of Health Care Services, the State Department
11 of Public Health, or the State Department of Social Services, and
12 involved in providing aid or services, or both, including health
13 care services, and medical assistance, to those persons who,
14 because of their economic circumstances or social condition, are
15 in need of that aid or those services and may benefit from them.

16 (ii) "Public social services" also includes activities and functions
17 administered or supervised by the United States Department of
18 Veterans Affairs or the California Department of Veterans Affairs
19 involved in providing aid or services, or both, to veterans, including
20 pension benefits.

21 (iii) "Unreasonable fee" means a fee that is exorbitant and
22 disproportionate to the services performed. Factors to be
23 considered, when appropriate, in determining the reasonableness
24 of a fee, are based on the circumstances existing at the time of the
25 service and shall include, but not be limited to, all of the following:

26 (I) The time and effort required.

27 (II) The novelty and difficulty of the services.

28 (III) The skill required to perform the services.

29 (IV) The nature and length of the professional relationship.

30 (V) The experience, reputation, and ability of the person
31 providing the services.

32 (C) This paragraph shall not apply to attorneys licensed to
33 practice law in California, who are subject to the California Rules
34 of Professional Conduct and to the mandatory fee arbitration
35 provisions of Article 13 (commencing with Section 6200) of
36 Chapter 4 of Division 3 of the Business and Professions Code,
37 when the fees charged or received are for providing representation
38 in administrative agency appeal proceedings or court proceedings
39 for purposes of procuring, maintaining, or securing public social
40 services on behalf of a person or group of persons.

1 (25) (A) Advertising or promoting any event, presentation,
2 seminar, workshop, or other public gathering regarding veterans'
3 benefits or entitlements that does not include the following
4 statement in the same type size and font as the term "veteran" or
5 any variation of that term:

6 (i) "I am not authorized to file an initial application for Veterans'
7 Aid and Attendance benefits on your behalf, or to represent you
8 before the Board of Veterans' Appeals within the United States
9 Department of Veterans Affairs in any proceeding on any matter,
10 including an application for such benefits. It would be illegal for
11 me to accept a fee for preparing that application on your behalf."
12 The requirements of this clause do not apply to a person licensed
13 to act as an agent or attorney in proceedings before the Agency of
14 Original Jurisdiction and the Board of Veterans' Appeals within
15 the United States Department of Veterans Affairs when that person
16 is offering those services at the advertised event.

17 (ii) The statement in clause (i) shall also be disseminated, both
18 orally and in writing, at the beginning of any event, presentation,
19 seminar, workshop, or public gathering regarding veterans' benefits
20 or entitlements.

21 (B) Advertising or promoting any event, presentation, seminar,
22 workshop, or other public gathering regarding veterans' benefits
23 or entitlements which is not sponsored by, or affiliated with, the
24 United States Department of Veterans Affairs, the California
25 Department of Veterans Affairs, or any other congressionally
26 chartered or recognized organization of honorably discharged
27 members of the Armed Forces of the United States, or any of their
28 auxiliaries that does not include the following statement, in the
29 same type size and font as the term "veteran" or the variation of
30 that term:

31
32 "This event is not sponsored by, or affiliated with, the United
33 States Department of Veterans Affairs, the California Department
34 of Veterans Affairs, or any other congressionally chartered or
35 recognized organization of honorably discharged members of the
36 Armed Forces of the United States, or any of their auxiliaries.
37 None of the insurance products promoted at this sales event are
38 endorsed by those organizations, all of which offer free advice to
39 veterans about how to qualify and apply for benefits."
40

1 (i) The statement in this subparagraph shall be disseminated,
2 both orally and in writing, at the beginning of any event,
3 presentation, seminar, workshop, or public gathering regarding
4 veterans' benefits or entitlements.

5 (ii) The requirements of this subparagraph shall not apply in a
6 case where the United States Department of Veterans Affairs, the
7 California Department of Veterans Affairs, or other congressionally
8 chartered or recognized organization of honorably discharged
9 members of the Armed Forces of the United States, or any of their
10 auxiliaries have granted written permission to the advertiser or
11 promoter for the use of its name, symbol, or insignia to advertise
12 or promote the event, presentation, seminar, workshop, or other
13 public gathering.

14 (26) Representing that a product is made in California by using
15 a Made in California label created pursuant to Section 12098.10
16 of the Government Code, unless the product complies with Section
17 12098.10 of the Government Code.

18 (27) *Representing that a product is made in North America in*
19 *violation of Section 17533.75 of the Business and Professions*
20 *Code.*

21 (b) (1) It is an unfair or deceptive act or practice for a mortgage
22 broker or lender, directly or indirectly, to use a home improvement
23 contractor to negotiate the terms of any loan that is secured,
24 whether in whole or in part, by the residence of the borrower and
25 which is used to finance a home improvement contract or any
26 portion thereof. For purposes of this subdivision, "mortgage broker
27 or lender" includes a finance lender licensed pursuant to the
28 California Finance Lenders Law (Division 9 (commencing with
29 Section 22000) of the Financial Code), a residential mortgage
30 lender licensed pursuant to the California Residential Mortgage
31 Lending Act (Division 20 (commencing with Section 50000) of
32 the Financial Code), or a real estate broker licensed under the Real
33 Estate Law (Division 4 (commencing with Section 10000) of the
34 Business and Professions Code).

35 (2) This section shall not be construed to either authorize or
36 prohibit a home improvement contractor from referring a consumer
37 to a mortgage broker or lender by this subdivision. However, a
38 home improvement contractor may refer a consumer to a mortgage
39 lender or broker if that referral does not violate Section 7157 of
40 the Business and Professions Code or any other provision of law.

1 A mortgage lender or broker may purchase an executed home
2 improvement contract if that purchase does not violate Section
3 7157 of the Business and Professions Code or any other provision
4 of law. Nothing in this paragraph shall have any effect on the
5 application of Chapter 1 (commencing with Section 1801) of Title
6 2 to a home improvement transaction or the financing thereof.

7 SEC. 3. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.